Supreme Court, U.S.
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No. 97-1040

In the Supreme Court of the United States

OCTOBER TERM, 1997

JAMES C. BARNES, JR., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals correctly affirmed the district court's decision that it lacked jurisdiction over petitioner's tort suit under the Suits in Admiralty Act, 46 U.S.C. 741-752.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	1
Statement	1
Argument	4
Conclusion	9

TABLE OF AUTHORITIES

Cases:

Alderman v. *Pacific Northern Victor, Inc.*, 95 F.3d 1061 (11th Cir. 1996)	4
Carroll v. *Protection Maritime Ins. Co.*, 512 F.2d 4 (1st Cir. 1975)	6
Evergreen Marine Corp. v. *Six Consignments of Frozen Scallops*, 4 F.3d 90 (1st Cir. 1993)	6
Executive Jet Aviation, Inc. v. *City of Cleveland*, 409 U.S. 249 (1972)	3, 7-8
Florio v. *Olson*, 129 F.3d 678 (1st Cir. 1997)	4
Grubart v. *Great Lakes Dredge & Dock Co.*, 513 U.S. 527 (1995)	4, 5, 8
J. Lauritzen A/S v. *Dashwood Shipping, Ltd.*, 65 F.3d 139 (9th Cir. 1995)	4
Khedivial Line, S.A.E. v. *Seafarers' Int'l Union*, 278 F.2d 49 (2d Cir. 1960)	7
Kossick v. *United Fruit Co.*, 365 U.S. 731 (1961)	8
Kuehne & Nagel (AG & Co.) v. *Geosource, Inc.*, 874 F.2d 283 (5th Cir. 1989)	3, 4
Lane v. *Pena*, 116 S. Ct. 2092 (1996)	8
Transatlantic Marine Claims Agency, Inc. v. *Ace Shipping Corp.*, 109 F.3d 105 (2d Cir. 1997)	7
White v. *United States*, 53 F.3d 43 (4th Cir. 1995)	4-5

Statutes: Page

Federal Tort Claims Act:
28 U.S.C. 1346(b) 2
28 U.S.C. 1346(c) 2
28 U.S.C. 2671-2680 2
28 U.S.C. 2675 3
28 U.S.C. 2680(d) 2
Suits in Admiralty Act, 46 U.S.C. 741 *et seq.*:
46 U.S.C. 741-753 2
46 U.S.C. 742 ..... 2, 8
46 U.S.C. 745 2

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A6) is unpublished, but the decision is noted at 129 F.3d 606 (Table). The opinion of the district court (Pet. App. A8-A13) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on September 17, 1997. The petition for a writ of certiorari was filed on December 16, 1997. This Court's jurisdiction is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. In 1987, petitioner James C. Barnes obtained a five-year license from the United States Coast Guard

to operate a vessel of up to 300 tons. In 1990, the Coast Guard endorsed petitioner's license to permit him to operate vessels of up to 500 tons. When petitioner sought to renew his license at the end of 1994, the Coast Guard informed him that the license had expired in 1992. The Coast Guard subsequently charged petitioner with operating a vessel without a valid license, and issued him a warning. Pet. App. A2.

Petitioner filed suit in federal district court against the United States under the Suits in Admiralty Act (SAA), 46 U.S.C. 741-753, and the Federal Tort Claims Act (FTCA), 28 U.S.C. 1346(b) and (c), 2671-2680. The SAA waives sovereign immunity for claims against the United States "[i]n cases where * * * if a private person or property were involved, a proceeding in admiralty could be maintained." 46 U.S.C. 742. The FTCA similarly waives sovereign immunity for certain tort claims against the United States "under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred." 28 U.S.C. 1346(b).[1]

Petitioner's complaint alleged that Coast Guard personnel negligently misrepresented to him that his license would be valid for five years after the 1990 endorsement, and that the Coast Guard negligently failed to follow its own regulations when it endorsed the license. Pet. App. A2, A8, A10. Petitioner alleged

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[1] The SAA and the FTCA are mutually exclusive. See 46 U.S.C. 745 (remedy provided under SAA is "exclusive of any other action by reason of the same subject matter") and 28 U.S.C. 2680(d) (FTCA does not apply to "[a]ny claim for which a remedy is provided by [46 U.S.C. 741-752]").

that he was forced to reapply for a new license, a process which required a period of study and testing. *Id.* at A2, A9.

2. The district court dismissed petitioner's suit for lack of subject matter jurisdiction. Pet. App. A8-A13. The court observed that in order for a claim to be maritime in nature under the SAA, "the 'wrong and injury complained of must have been committed wholly upon the high seas or navigable waters' (maritime locality), and the wrong must 'bear a significant relationship to traditional maritime activity' (maritime nexus)." *Id.* at A9 (quoting *Executive Jet Aviation, Inc.* v. *City of Cleveland*, 409 U.S. 249, 253 (1972)). The district court held that petitioner's claims do not meet the maritime locality test because both the alleged negligence and injuries occurred on land. *Id.* at A9-A10. The district court also held that it lacked jurisdiction over petitioner's FTCA claim because petitioner had prematurely filed suit under 28 U.S.C. 2675. *Id.* at A11-A12.

3. The court of appeals affirmed in an unpublished, per curiam opinion. Pet. App. A1-A6. The court observed that a tort claim is within the federal courts' admiralty jurisdiction "if the alleged wrong occurs on navigable waters (situs) *and* bears a significant relationship to traditional maritime activity (nexus)." *Id.* at A3-A4 (quoting *Kuehne & Nagel (AG & Co.)* v. *Geosource, Inc.*, 874 F.2d 283, 288 (5th Cir. 1989)). The court concluded that petitioner's suit does not satisfy the situs test because "[t]he alleged wrongful conduct and consequences of that conduct occurred on land." *Id.* at A4. The court reasoned that "[t]he processing of [petitioner's] license applications was a land-based activity," and "[petitioner] conceded that the Coast Guard's alleged negligent misrepresentation took

place on land." *Ibid.* Although the court acknowledged that admiralty jurisdiction may exist over suits involving "land-based activities which 'directly produced a major injury on navigable waters,'" the court found that "the injury here cannot fairly be described as occurring on navigable waters." *Ibid.* (quoting *Kuehne & Nagel*, 874 F.2d at 289). The court explained that petitioner's claims based on "loss of income, unemployment, administrative proceedings and warning from the Coast Guard, and retesting and reapplication for a new license," all are "essentially land-based." *Id.* at A4. Thus, the court affirmed the dismissal of petitioner's SAA claims for lack of jurisdiction. *Id.* at A6.[2]

ARGUMENT

1. This Court has made clear that "a party seeking to invoke federal admiralty jurisdiction * * * over a tort claim must satisfy conditions both of location and of connection with maritime activity." *Grubart* v. *Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 534 (1995). To satisfy the location test, the claim must be based on (1) a tort that "occurred on navigable water" or (2) an "injury suffered on land [that] was caused by a vessel on navigable water." *Ibid.* The courts of appeals have consistently applied the two-part test under *Grubart* for federal maritime jurisdiction. See, *e.g.*, *Florio* v. *Olson*, 129 F.3d 678, 679-680 (1st Cir. 1997); *Alderman* v. *Pacific Northern Victor, Inc.*, 95 F.3d 1061, 1064 (11th Cir. 1996); *J. Lauritzen A/S* v. *Dashwood Shipping, Ltd.*, 65 F.3d 139, 142 (9th Cir.

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[2] The court of appeals also affirmed the dismissal of petitioner's FTCA claims. Pet. App. A2-A3. Petitioner does not challenge that ruling in this Court.

1995); *White* v. *United States*, 53 F.3d 43, 45 (4th Cir. 1995). Thus, the court of appeals correctly concluded that a tort suit is not within the scope of the district court's admiralty jurisdiction unless it satisfies the two-part test under *Grubart*. See Pet. App. A3-A4.

a. Petitioner argues (Pet. 10) that his suit meets the maritime location test because the Coast Guard's negligence prevented him from sailing on navigable waters. That injury, however, is too remote to satisfy the location test. Here, the Coast Guard's alleged negligence took place on land. Petitioner's claimed injuries, which occurred more than four years later, similarly are "essentially land-based." Pet. App. A4. Petitioner was required to retest and to apply for a new license—both of which occurred on land. That a consequence of the required retesting and application was that petitioner could not work on navigable waters for a period of time does not convert petitioner's claim into a maritime tort. Indeed, if that type of indirect effect were sufficient to find that a tort "occurred on navigable water," *Grubart*, 513 U.S. at 534, maritime jurisdiction would extend to any injury to a seaman on land that affected his employment. Petitioner does not, nor can he, cite any authority that would expand admiralty jurisdiction so dramatically.[3]

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[3] Petitioner alternatively contends (Pet. 10) that the location test is satisfied because the Coast Guard's actions caused him to sail on navigable waters with an expired license. Petitioner's injuries, however, stem from his claim that he "was forced to undergo re-testing to regain his license which would have otherwise been routinely renewed." Pet. 3; see also Pet. App. A4 ("The injuries [petitioner] suffered—loss of income, unemployment, administrative proceedings and warning from

b. Petitioner also argues (Pet. 7) that his tort claim would meet the maritime location test "if this case had arisen in the First Circuit." Petitioner relies on *Carroll* v. *Protection Maritime Insurance Co.*, 512 F.2d 4 (1st Cir. 1975), in which the First Circuit held that federal admiralty jurisdiction existed over an action by seamen and commercial fishermen against marine insurers whose "blacklisting" allegedly interfered with the claimants' contracts for employment on marine vessels. The First Circuit held that the claims were "so interwoven with present and potential maritime contractual relationships —traditional concerns of admiralty—as to fall within [federal admiralty] jurisdiction," and that "the impact of defendant's alleged actions, at least where existing employment was terminated, was felt in the operations of the affected vessels at sea." *Id.* at 8-9.

The First Circuit has suggested, however, that *Carroll* is limited to the peculiar facts involved in that case. In *Evergreen Marine Corp.* v. *Six Consignments of Frozen Scallops*, 4 F.3d 90 (1993), the First Circuit observed that "[t]he admiralty jurisdiction test for tort claims is clearly established," and comprises both "the traditional 'situs' analysis" as well as the "'nexus' analysis." *Id.* at 93 (internal quotation marks omitted). Rejecting the plaintiff's suggestion to "extend the so-called 'impact' test for admiralty jurisdiction, applicable to claims for intentional interference with contractual relations," to a claim of conversion, the court found that a "*Carroll*-based 'impact' analysis would invite 'open-ended ex-

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the Coast Guard, and retesting and reapplication for a new license—were essentially land-based[.]").

pansion of admiralty jurisdiction.'" *Id.* at 94-95 (quoting *Carroll*, 512 F.2d at 6).

Thus, if confronted with the issue, the First Circuit would not likely extend *Carroll* to reach petitioner's suit. Unlike the suit at issue in *Carroll*, petitioner's claim of negligent misrepresentation and negligent failure to follow federal regulations neither involves an intentional interference with contract nor is otherwise intertwined with an admiralty contract cause of action. Indeed, as the district court found (Pet. App. A10), the "Coast Guard's alleged negligence was not designed to terminate [petitioner's] employment as an operator of vessels." Accordingly, the First Circuit's decision in *Carroll* does not dictate a different outcome in a case such as this one.[4]

2. Petitioner argues that this Court should grant certiorari to hold that "maritime jurisdiction always exists over tort claims involving a seaman's licensing and employment." Pet. 9. Petitioner also relies (Pet.

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[4] Petitioner also suggests that the Second Circuit's decisions in *Transatlantic Marine Claims Agency, Inc.* v. *Ace Shipping Corp.*, 109 F.3d 105 (1997), and *Khedivial Line, S.A.E.* v. *Seafarers' International Union*, 278 F.2d 49 (1960), indicate that the Second Circuit "may be aligned with the First Circuit's position in *Carroll*." Pet. 6. That is incorrect. In *Transatlantic Marine Claims Agency, Inc.*, the court simply stated that in deciding whether a tort meets the maritime *nexus* requirement, "[a]n important—although not necessarily determinative—consideration * * * is whether the tort occurred on navigable waters." 109 F.3d at 109. In *Khedivial Line, S.A.E.*, the court, in holding that injunctive relief was unavailable in admiralty actions, "assume[d] * * * without deciding" that the alleged tort—"picketing which prevents a vessel's being unloaded when the owner is powerless to take action"—was maritime in nature. 278 F.2d at 52. Neither of those decisions conflicts with the decision below.

8-9) on this Court's recognition in *Executive Jet Aviation, Inc.* v. *City of Cleveland*, 409 U.S. 249, 261 (1972), that "reliance on the relationship of the wrong to traditional maritime activity is often more sensible and more consonant with the purposes of maritime law than is a purely mechanical application of the locality test." This Court made clear in *Grubart*, 513 U.S. at 534, however, that an admiralty tort claim "must satisfy conditions *both* of location and of connection with maritime activity." *Id.* at 534 (emphasis added). Accordingly, there is no basis for petitioner's contention that a maritime connection test should be the sole factor in determining whether tort suits involving a seaman's employment fall within a federal court's admiralty jurisdiction.[5]

Moreover, it would be particularly inappropriate to expand the scope of admiralty jurisdiction in suits against the United States under the SAA. "A waiver of the Federal Government's sovereign immunity must be unequivocally expressed in statutory text * * * and will not be implied." *Lane* v. *Pena*, 116 S. Ct. 2092, 2096 (1996) (internal citations omitted). The SAA waives sovereign immunity only "[i]n cases where * * * if a private person or property were involved, a proceeding in admiralty could be maintained." 46 U.S.C. 742. As explained above, petitioner's claims would not fall within a court's admiralty jurisdiction if they were asserted against a private party, because the claims fail to satisfy the

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[5] Petitioner's reliance (Pet. 9) on *Kossick* v. *United Fruit Co.*, 365 U.S. 731 (1961), is similarly misplaced. That decision involved not an admiralty tort but a claim brought by a seaman against his employer for breach of an oral contract. *Id.* at 732-734.

location test. Thus, petitioner's approach would expand the waiver of sovereign immunity beyond the express terms of the SAA.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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